(COPY)

San Francisco, California,
July 23, 1940.

James C. Weld, M. D.
1036 South Alvarado
Los Angeles, California

Dear Doctor:

I trust that you will accept the apology of the Board of Medical Examiners and the undersigned for inadvertently listing your name in the 1939 Annual Report as one whose license was revoked by the Board of Medical Examiners.

While it is true that the Board revoked your license at its July 1939 meeting, it is also true that on November 30, 1939, the Superior Court in and for the county of Los Angeles, in effect, set aside the Board's action and ordered your license restored without prejudice to the Board's right to pursue such other proceedings as might be proper in the premise.

Pursuant to the court's order, the Board at its regular meeting held in Los Angeles, February 26, 1940, annulled as of July 13, 1939, its former action and restored your medical license. You now are and at all times have been in good standing.

You will note by reference to the 1940 directory published by the Board of Medical Examiners that your name is *not* listed on page 10 thereof under the heading of "Penalty Imposed for Violations of . . . the Medical Practice Act." You will further note that your name is listed in the alphabetical section of said directory (page 136), as well as in the Los Angeles County listing on page 231 of said directory. Only licentiates in good standing are so listed. The failure to remove your name from the list of those disciplined by the Board was purely an oversight.

I am today forwarding a copy of this letter to George H. Kress, M. D., Editor of CALIFORNIA AND WESTERN MEDICINE (official journal of the California Medical Association) with the request that he publish same in the next issue of that journal.

I trust the oversight referred to herein has not caused you any embarrassment.

With kindest personal regards, believe me

Very truly yours,

C. B. PINKHAM, M. D.,
Secretary-Treasurer.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Responsibility of One Physician for Malpractice by Another

Although generally a physician may be held liable only for his own acts and may with safety call in another physician to aid him in a particular case without accepting responsibility for negligence of such other physician, there are certain situations in which a physician is responsible for the acts of other persons and these should be constantly kept in mind.

Employees.—With few exceptions, a physician is liable for negligence of his assistant, apprentice, agent or employee. The failure of a nurse to remove a sponge from a patient's abdomen or other situs of an operation, is typical of this source of liability. Where it can be shown that the nurse was an employee or assistant of the operating surgeon, the surgeon may be held liable. However, since there are circumstances in which the hospital, rather than the surgeon, is responsible, reference is made to a more detailed discussion of this question, to be found in the Medical Jurisprudence article in the April, 1937, issue of this publication. The important factor in establishing this type of liability is the control which one is presumed to exert over persons who stand in an employee relationship to him.

Nurse or Attendant Not an Employee.—Since it is a matter of common knowledge that it is customary in many hospitals for the operating surgeon to leave the post-operation care of patients, in the matter of dressing, packing and unpacking wounds, to the house doctor (interne) and staff nurses, the surgeon is not responsible for the negligence of such persons unless it is shown that the hospital was owned by the doctor or he had some other peculiar control over such assistants.

Physicians Called in to Help: Consultants.—It may be stated that generally one physician may with impunity call in another physician to assist him so long as he uses due care in the selection of that physician. He may select anyone whose professional standing in the locality is good and who is experienced in that particular line of practice. Thus, in a case where it appeared that the patient was under the general treatment of one physician but another physician of good standing was called in to diagnose the disease and prescribe or direct treatment for its cure, in an action for malpractice against both physicians, it was held that the one who was specially employed by the patient should only be liable for such damages as resulted from his connection with the case on the occasion of his visit, and that he was not liable for what the other physician did or omitted to do in his absence.

Substitute.—A physician, due to other calls, is often required to send a substitute to treat a patient. Just as in the case where a second physician is called in to help, the first physician's liability depends upon the care which has been used in the selection of the substitute. If reasonable care has been exerted, there is no liability.

Two or More Physicians Engaged Independently.—The courts have stated the rule applicable to this situation as follows:

> Each, in serving with the other, is rightly held answerable for his own conduct, and as well for all the wrongful acts or omissions of the other, . . . which in the exercise of reasonable diligence under the circumstances, he should have observed.

Thus, it may be seen that where there are two physicians on the case, both hired by the patient independent of the other, each has the duty of exercising due care toward the patient and neither can permit the other to do a wrongful act under his own observation. Added to this may be a responsibility for each other where they are acting jointly in a particular endeavor such as an operation or specific act of treatment. In such case, each is held liable for the acts of the other. It has been held, however, that where a physician could have taken no part in an operation other than in administering the anesthetic, he could not be liable for the negligence of the operating surgeon since the two were not acting jointly in the operation.

Where One Physician Contributes to an Injury Caused by Another.—Generally, one may not be excused from one wrongful act merely because another was also involved in a similar wrongful act. Thus, where a physician's treatment of the plaintiff was negligent from the start, the fact that another physician subsequently had exclusive control of the case will not relieve the defendant of his negligence while he was in attendance. Sometimes it is not easy to establish which of one or more surgeons or physicians actually caused an injury. In such case, if the physicians or surgeons were giving joint treatment, each is liable for any injury which may result. Thus, where a family physician recommended a surgeon to perform an operation, at which he was present and assisted, although not personally using the knife, he was held to be jointly liable because both doctors were considered as joint tort feasors.

†Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.